

John Kirk Thornton  
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Saint Louis Park, Minnesota  
55416

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CLERK, U.S. DISTRICT COURT  
MINNEAPOLIS, MINNESOTA

**“District Court of the United States”  
District of Minnesota**

**UNITED STATES OF AMERICA**

*Petitioner*

vs.

**John Kirk Thornton,**

*In propria persona*

**Case No. 0:13-mc-00087-SRN-TNL**

**Expedited Motion to Dismiss as the Essential Elements of Nelson’s ORDER Do Not  
Exist**

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### **I. General Background Information.**

Comes now John Kirk Thornton, *in propria persona* (“Thornton”) with this **Expedited Motion to Dismiss as the Essential Elements of Nelson’s ORDER Do Not Exist (“Expedited Motion”)** in **“the Court,”** being the **“District Court of the United States”** arising under **Article III Sections 1 and 2 of the Constitution of the United States** exercising the **judicial Power of the United States**. The substantive reason for the **“Expedited Motion”** is because Thornton is under threat of incarceration for **Contempt of Court from *this Court* if *this Court* is not satisfied by April 25<sup>th</sup>, 2018 of whatever exactly they are demanding of the already existing “clear and convincing evidence;”** and further, the **“UNITED STATES OF AMERICA”,** being a sovereign body politic, and its agency being the IRS<sup>1</sup> has a bona fide track record of dilatory and obfuscations actions, not to mention that there is no **“Counsel for the United States of America”** [Plaintiff/Petitioner] in the **“proceeding”** and **“hearing”** in the United States District Court on the record in **“*this Court*”** being repeatedly condoned and endorsed by **a Tony N. Leung, Magistrate Judge (“Leung”) and a Susan Richard Nelson, Judge (“Nelson”).**

Nelson’s Order is evidenced by **Attachment A—Nelson Memorandum Opinion And Order At Docket 85 (“Attach A—Nelson’s Order”)**, which ***this Court*** shall take judicial Notice thereof, with this excerpt of the **Attach A—Nelson’s Order** pages 8 and 9, to wit:

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<sup>1</sup> Docket 1—Petition To Enforce Internal Revenue Service Summons, Pg. 1.

**THEREFORE, IT IS HEREBY ORDERED THAT:**

1. Respondent John K. Thornton is found in constructive civil contempt of court for failure to comply with the August 1, 2014 Order [Docket No. 23];

2. The issuance of a bench warrant for the arrest of Respondent John K. Thornton to compel compliance with the August 1, 2014 Order is stayed until April 30, 2015, to permit Respondent John K. Thornton to purge his contempt by complying or substantially complying with the August 1, 2014 Order;

3. The Government is ordered to file with the Court a declaration ("Declaration") on or shortly after April 30, 2015, informing the Court whether Respondent John K. Thornton *has complied or substantially complied* with the IRS summons at issue; and

4. If the Declaration does not state that Respondent John K. Thornton has complied or substantially complied with the August 1, 2014 Order, then

a. the stay of the bench warrant will be lifted and a bench warrant automatically will be issued for Respondent John K. Thornton's arrest; and

b. Respondent John K. Thornton will be directed to pay immediately to the Clerk of Court \$1,000.00, to be remitted to the Government for reasonable costs and attorney's fees; and

5. Magistrate Judge Leung's R&R [Doc. No. 73] is ADOPTED, as amended to provide additional time to Respondent.

Dated: March 27, 201

s/Susan Richard Nelson  
SUSAN RICHARD NELSON  
United States District Judge

Therein arises the essential elements of Nelson's Order as follows:

(1) Nelson's Means exactly what Nelson Ordered in **Attach A—Nelson's Order**; and,

(2) **"substantially"** is required to be defined; and,

- (3) “**Declaration**” is required to be defined; and,
- (4) Was a legal and Lawful “**Declaration**” Filed into *this Court*; and,
- (5) “**Government**” is required to be defined; and,
- (6) did the “**Government**” file in a legal and lawful Declaration is a *sine qua non* for a valid contempt charge from *this Court* against Thornton.

## II. Nelson’s Order At Docket 85 on March 27<sup>th</sup>, 2015.

### A. Nelson Meant exactly what Nelson Ordered in Attach A—Nelson’s Order

Thornton will accept as true that Nelson being learned in the law and Nelson is deemed to know the law<sup>2</sup> did require in her Order evidenced by **Attach A—Nelson’s Order** to be followed exactly as ORDERED and Written.

### B. “Substantially” is required to be defined.

**Jeffery Wagner (“Wagner”)** did file in Seven alleged “**Declarations**” into *this Court* with the final seventh Declaration evidenced by **Attachment B—Seventh Declaration of Jeffrey Wagner At Docket 95, April 30<sup>th</sup>, 2015 (“Attach B—Wagner Declaration No. 7”)**.

The **Attach B—Wagner Declaration No. 7** is evidenced in the Docket Sheet of *this Court* as Docket 95, being **Attachment C—Docket Sheet of this Instant Controversy (“Attach C—Docket Sheet”)**; wherein, **Wagner’s Declaration** is under

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<sup>2</sup> *Groh v. Ramirez*, 540 U.S. 551, 563, 564 (2004) “If the law was clearly established . . . a reasonably competent public official should know the law governing his conduct.” Citing *Harlow v. Fitzgerald*, 457 U.S. 800, 818-819 (1982); *State of Ohio v. Davis*, 584 N.E.2d 1192, 1196 (Sup.Ct. Ohio 1992) “**Judges**, unlike juries, **are presumed to know the law.**”; *Leary v. Gledhill*, 84 A.2d 725, 728 (Sup.Ct. NJ 1951) “A court will in general take judicial notice of and apply the law of its own jurisdiction without pleading or proof thereof, the judges being deemed to know the law or at least where it is to be found.”

28 U.S.C. § 1746(1) has a “penalty of perjury” statement but the Declaration does NOT state that it is “true and correct,” therein, this is another void and meaningless Declaration of Wagner’s with the continuing CON and Fraud being sanctioned by both Leung and Nelson.

And further, this Seventh Declaration of Wagner was filed directly into *this Court* without being under a Motion or Pleading of the “Counsel for the United States of America,” wherein *flow a fortiori* that Wagner has standing to file directly into *this Court*, representing the “UNITED STATES OF AMERICA” a “sovereign body politic.” Again the CON and Fraud was being sanctioned by both Leung and Nelson.

Thornton in various pleading has filed Motions to Clarify into *this Court* evidenced in Attach C—Docket Sheet Docket 56 and Docket 57 with Memorandum in support filed at Docket 58 with Attachments at Docket 59 and Docket 60 with the Motion at Docket 61; and, again in Docket 71 with Attachments A-H; and, again at Docket 71; and, again at Docket 79; and, again at Docket 81 with Attachments at Docket 82 Attachments 1-17; and, again at Docket 84.

Wagner did make a “determination” in Attach B—Wagner Declaration No. 7 page 2, to wit:

7. John K. Thornton has not substantially complied with the order of this Court dated on March 27, 2015.

8. I make this declaration under the penalty of perjury, and in compliance with this Court’s Order of March 27<sup>th</sup>, 2015.

Executed this 30<sup>th</sup> day of April, 2015



In *Bailey v. United States*, 39 F.supp.2d 1132, 1138 FN4 (N.D.Iowa 1998), to wit:

[A]nd whether or not those risk caused by the amount of rent due under the leases to be substantially dependent on production FN4. To do this, the court will need a **working definition of the terms “substantial” and “substantially.”** Courts have given these terms widely different meanings, depending on the context. See *Victor v. Nebraska*, 511 U.S. 1, 19, 114 S.Ct. 1239, 1250, 127 L.Ed.2d 583 (1994) ( “substantial” means either “not seeming or imaginary” or “that specified to a large degree” in the context of a reasonable doubt instruction, citing Webster’s Third New International Dictionary 2280 (1981)); *Kluener v. Commissioner of Internal Revenue*, 154 F.3d 630, 637 (6th Cir.1998) ( “substantial” means something less than a preponderance, but more than a mere reasonable basis, citing 26 C.F.R. ¶ 1.6662-4(d)(3) (1997)); *Id.*, at 639 (“substantial” means “considerable” or “ample”); *GrandCanyon Air Tour Coalition v. Federal Aviation Administration*, 154 F.3d 455, 474 (D.C.Cir.1998) (“substantial” may well be defined as meaning “more than half,” “being that specified to a large degree or in the main,” “not seeming or imaginary,” “considerable in amount”); *York Products, Inc. v. Central Tractor Farm & Family Center*, 99 F.3d 1568, 1572–73 (Fed.Cir.1996) (“substantially” means “considerable in ... extent,” citing American Heritage Dictionary Second College Edition 1213 (2d ed.1982) or “largely but not wholly that which is specified,” citing Webster’s Ninth New Collegiate Dictionary 1176 (9th ed.1983)); *Koch v. United States*, 47 F.3d 1015, 1021 (10th Cir.1995) (“substantially” means “justified in substance or in the main—that is, justified to a degree that could satisfy a reasonable person.” (citations omitted)); *Laitram Machinery, Inc. v. Carnitech*, 884 F.Supp. 1074, 1085 (E.D.La.1995) (definition of “substantially” in a patent case is a jury question); *C.E. Equipment Co., Inc. v. United States*, 17 Cl.Ct. 293, 299 (1989) (“substantially” means “less than totally”); *Darlington v. Studebaker-Packard Corporation*, 191 F.Supp. 438, 439 (N.D.Ind.1961) (“The word ‘substantially’ is a relative term and should be interpreted in accordance with context of claim in which it is used.”). **At trial, the court will expect the parties to propose appropriate definitions for these terms for the court to use in deciding this case.**

**Wagner** made an *ipse dixit* determination of “substantially” with no definition of the “term” “substantially” on the record by *this Court* in his alleged Declaration evidenced in **Attach B—Wagner Declaration No. 7** page 2, which as found in *Bailey*,

*ibid*, is to be determined by a Court.

Has Nelson abdicated to Wagner the authority and power of making judicial determinations of *this Court*?

Is Wagner part of *this Court* in some capacity?

Is Wagner qualified to make “judicial determinations” of that requires the term definition of “substantially” be disclosed?

Is Wagner practicing law?

Is Wagner learned in the law?

As Wagner is deemed to know the law<sup>3</sup>; therein, is Wagner authorized and empowered to make a “determination” using “substantially” with his alleged Declaration with no term definition supplied by *this Court*?

**Thornton still has no understanding** of the use of term “substantially” as used by Wagner, Nelson and Leung in this controversy as declared by Wagner in Attach B—Wagner Declaration No. 7 page 2 —“7. John K. Thornton **has not substantially complied** with the order of this Court dated on March 27, 2015.”

Thornton as found no authority of Wagner who claims to be a “Revenue Officer” of the Internal Revenue Service remembering the Petitioner is the “United States of

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<sup>3</sup> *Groh v. Ramirez*, 540 U.S. 551, 563, 564 (2004) “If the law was clearly established . . . a reasonably competent public official should know the law governing his conduct.” Citing *Harlow v. Fitzgerald*, 457 U.S. 800, 818-819 (1982); *State of Ohio v. Davis*, 584 N.E.2d 1192, 1196 (Sup.Ct. Ohio 1992) “**Judges, unlike juries, are presumed to know the law.**”; *Leary v. Gledhill*, 84 A.2d 725, 728 (Sup.Ct. NJ 1951) “A court will in general take judicial notice of and apply the law of its own jurisdiction without pleading or proof thereof, the judges being deemed to know the law or at least where it is to be found.”

America is a sovereign body politic” as evidenced by “The United States of America on behalf of its agency, the Internal Revenue Service (“IRS”)”<sup>4</sup> to make *ipse dixit* determinations of term definitions for *this Court* in this Controversy or any Court.

**C. Declaration is Required to be Defined.**

**Wagner in Attach B—Wagner Declaration No. 7 page 1 states “Jeffrey Wagner declares pursuant to 28 U.S.C. § 1746(1).”**

28 U.S.C. § 1746—Unsworn declarations under penalty of perjury, to wit:

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

**(1) If executed without the United States: “I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).**

**(Signature)”.**

**(2) If executed within the United States, its territories, possessions, or commonwealths: “I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).**

**(Signature)”.**

**CREDIT(S)**

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<sup>4</sup> *UNITED STATES OF AMERICA v. JOHN K. THORNTON*, 0-13-mc-00087-SRN-TNL (United States District Court, District, Docket 1—Petition to Enforce Internal Revenue Service Summons, pg. 1. “The United States of America on behalf of its agency, the Internal Revenue Service (“IRS”)”

(Added Pub.L. 94-550, § 1(a), Oct. 18, 1976, 90 Stat. 2534.)

**Wagner** did file two Declarations (one and two) under the penalty of perjury as true and correct then filed in five more Declarations minus the “true and correct” statement “as substantially” required in 28 U.S.C. § 1746(1), *supra*.

In **Attach B—Wagner Declaration No. 7**; therein, is the alleged “Declaration” “true and correct” under the penalty of perjury?

Thornton finds no authority to for **Wagner** to not be in compliance with the statute of the United States codified in 28 U.S.C. § 1746(1) “(1) If executed without the United States: “I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date) (signature” therein *flows a fortiori* that **Wagner’s Declaration** evidenced in **Attach B—Wagner Declaration No. 7** is Not a Declaration.

**D. Was a legal and Lawful “Declaration” Filed into *this Court***

As **Wagner’s Declaration** evidenced by **Attach B—Wagner Declaration No. 7** is NOT in compliance with 28 U.S.C. § 1746 (1) therein as a matter of law **Attach B—Wagner Declaration No. 7** in not the required “Declaration” required by Nelson in **Attach A—Nelson’s Order** page 8 and 9 requiring a “Declaration” be filed by the Government; therein, there is **NO Declaration that has been filed into *this Court* as required**.

**E. Government” is required to be defined**

In **Attach A—Nelson’s Order** pages 8 and 9, to wit:

3. The Government is ordered to file with the Court a declaration

**("Declaration") on or shortly after April 30, 2015,** informing the Court whether Respondent John K. Thornton *has complied or substantially complied* with the IRS summons at issue;

Thornton has no understanding who is the "Government" in this instant Controversy as the Petitioner is the "UNITED STATES OF AMERICA;" and further, **Bahram Samie ("Samie") and Wilhelm** claims in answer in Leung's proceedings when Leung asked for the identity of the Government, with the responses being "on behalf of the United States," to wit:

On December 11, 2013 with **Leung**, to wit:

**The Court:** At this time, **government**, please identify yourself for the record.  
**Mr. Wilhelm:** Yes, Your Honor, I'm D. Gerald Wilhelm. I'm an Assistant United States Attorney. I'm here **on behalf of the United States**".

On January 27, 2014 with **Leung**, to wit:

**The Court:** At this time, **government**, please identify yourself for the record.  
**Mr. Wilhelm:** Yes, Your Honor, I'm D. Gerald Wilhelm. I'm an Assistant United States Attorney. I'm here **on behalf of the United States**".

On November 4<sup>th</sup>, 2014 with **Leung**, to wit:

**The Court:** First of all, **government**, please identify yourself for the record.  
**Mr. Wilhelm:** Yes, Your Honor, I'm D. Gerald Wilhelm. I'm an Assistant United States Attorney. I'm here **on behalf of the United States**".

On January 27<sup>th</sup>, 2015 with **Leung**, to wit:

**The Court:** At this time, starting with the Petitioner, **United States of America**, identify yourself, Counsel, for the record please.

**Mr. Welhelm:** D. Gerald Wilhelm, Assistant United States Attorney,  
**for the United States, Your Honor.**

On March 21<sup>st</sup>, 2018 with **Leung**, to wit:

**The Court:** And at this time, **government**, please identify yourself  
for the record.

**Mr. Samie** Good afternoon, Your Honor. Assistant U.S. Attorney  
Bahram Samie appearing **on behalf of the United  
States.**

And further, in the **Seventh Declaration of Wagner** did filed directly into *this Court* a “Declaration” as the “Government” evidenced by **Attach B—Wagner Declaration No. 7.**

**This Attach B—Wagner Declaration No. 7** was filed in without being under a Motion or Pleading of the “Counsel for the United States of America;” or, even by Samie “on behalf of the United States” wherein *flow a fortiori* that Wagner has standing to file directly into *this Court*, representing the “UNITED STATES OF AMERICA” a “sovereign body politic” as the “Government?” Astounding!

As *this Court* has not identified who by definition the specific “Government” in the **Attach A—Nelson’s Order** pages 8 and 9 really is in this Controversy; therein, it is could be the “United States” as arising under the Constitution of the United States; or, the “UNITED STATES OF AMERICA;” or, “Internal Revenue Service;” or some unidentified entity that Wagner represents; or, there is no “Government” in this instant Controversy?

**F. Did the “Government” file in a legal and lawful Declaration?**

As no “Counsel for the United States of America” as appeared in this instant

controversy as **Nelson** requires the “**Government**” to file a “**Declaration**” as found **Attach A—Nelson’s Order** pages 8 and 9 therein *flows a fortiori* for **Nelson** to define and identify the “**Government**” in her **ORDER**.

### **III. Conclusion**

Therein as **NONE** of the essential elements of **Nelson’s Order** evidenced in **Attach A—Nelson’s Order** exist on the Record as follows:

- (1) **Nelson’s Means** exactly what **Nelson Ordered** in **Attach A—Nelson’s Order**; and,
- (2) “**substantially**” is required to be defined; and,
- (3) “**Declaration**” is required to be defined; and,
- (4) Was a legal and Lawful “**Declaration**” Filed into *this Court*; and,
- (5) “**Government**” is required to be defined; and,
- (6) did the “**Government**” file in a legal and lawful Declaration is a *sine qua non* for a valid contempt charge from *this Court* against **Thornton**.

**Thornton** has made more than one bona fide good faith effort in this instant Controversy, but **Wagner, Leung, Nelson, Wilhelm and Samie** will not identify with specificity the “terms” being used, the specific type of tax, who is the Government in this instant controversy, who is the “Counsel for the United States of America” there *this Court* is required as a matter of law to Dismiss this instant Controversy with prejudice.

My Hand,



**IV. Declaration of John Kirk Thornton**

I, John Kirk Thornton, do hereby declare that the facts contained herein are true and correct.

1. My true Christian Name is “John Kirk Thornton.”

2. I am of the age of majority and competent to testify to the facts contained and covered by this Declaration and this Expedited Motion.

3. I am a “citizen of Minnesota.”

4. I, “John Kirk Thornton” as a “citizen of Minnesota” am domiciled in Minnesota, one of the several States.

5. I am not a resident of any Federal Area as defined codified in 4 U.S.C. § 110(e).<sup>5</sup>

6. I am not domiciled in any of any Federal Area as defined codified in 4 U.S.C. § 110(e).<sup>6</sup>

7. I am not a “citizen of the United States.”

8. The “UNITED STATES OF AMERICA” has waited for twenty-five months to proceed with the Contempt of Court.

9. I have every intention of always appearing as required and will fulfill all obligations under the Laws of the United States and the Laws of Minnesota as required

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<sup>5</sup> 61 Stat. 645, c. 389, July 30, 1947.

<sup>6</sup> 61 Stat. 645, c. 389, July 30, 1947.



by a "citizen of Minnesota" domiciled in Minnesota, one of the several States precluding any "federal area" under the Buck Act.

10. I am unable to proceed as I don't understand as the "essential elements," *supra*, in the *sine qua non* as they do not exist.

This Declaration is filed under 28 U.S.C. § 1746 under the penalty of perjury that all facts are true and correct covered by this Declaration and Expedited Motion.

My Hand,



**V. Certificate of Service.**

I certify that this Motion to Dismiss is comprised of 3,010 words in 13 Font in Times New Roman.

I further certify that this Motion and Attachments were delivered personally or mailed First Class prepaid to the following parties, to wit:

**Bahram Samie**  
**U.S. Courthouse**  
**300 S 4th Street Suite 600**  
**Minneapolis, Minneapolis 55415**

Date: April 17<sup>th</sup>, 2018

  
\_\_\_\_\_  
Signature